STATE OF MICHIGAN

COURT OF APPEALS

POLICE OFFICERS ASSOCIATION OF MICHIGAN and COMMAND OFFICERS ASSOCIATION OF MICHIGAN, Plaintiffs-Appellants,	UNPUBLISHED June 27, 2006
v	No. 267100 Macomb Circuit Court
CITY OF MT. CLEMENS, MACOMB COUNTY SHERIFF, and MACOMB COUNTY, Defendants-Appellees.	LC No. 2005-002326-CL

Before: Cooper, P.J., and Neff and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order denying plaintiffs' motion for summary disposition and granting summary disposition in favor of defendants. We affirm.

I. FACTS AND PROCEDURAL HISTORY

On April 18, 2005, defendant City of Mt. Clemens (defendant city), faced with a serious financial crisis, voted to eliminate the Mt. Clemens Police Department and to enter into an agreement with defendant Macomb County (defendant county) for the county to provide all law enforcement services for defendant city. The Macomb County Board of Commissioners voted to approve the agreement between defendant city and defendant county. Thereafter, defendant city and defendant county entered into a contract in which the county agreed to provide law enforcement services for defendant city. Plaintiffs, Police Officers Association of Michigan, and Command Officers Association of Michigan, filed a four-count complaint against defendants seeking injunctive and declaratory relief.[1] In Count I, which is the only count that is relevant to this appeal,[2] plaintiffs alleged that the agreement between defendant city and defendant county

[1] The trial court denied plaintiffs' request for injunctive or declaratory relief in July 2005.

[2] The parties stipulated to the dismissal of Counts II, III, and IV, and the trial court entered an order dismissing those claims with prejudice on about September 1, 2005.

under which defendant county was to provide law enforcement services for defendant city violated § 76(3) of the sheriffs act, MCL 51.68 *et seq*., because defendant city planned to eliminate the city police force and therefore the number of sworn law enforcement officers employed by defendant city would be below the highest number of sworn law enforcement officers employed by defendant city within the 36 months immediately preceding the adoption of the resolution.[3]

Plaintiff moved for summary disposition under MCR 2.116(C)(10), arguing that the contract between defendant city and defendant county was void under § 76(3) of the sheriffs act and seeking an order requiring defendant city to re-establish the police department and re-hire its police officers, with full back pay, wages, and benefits. Defendants also moved for summary disposition under MCR 2.116(C)(8) and (10). Defendants county and county sheriff filed a joint motion for summary disposition, and defendant city filed a separate motion for summary disposition. Defendants all contended that § 76(3) of the sheriffs act did not apply and that the contract between defendant city and defendant county was lawful under the home rule city act, MCL 117.1 *et seq.* In addition, defendants county and county sheriff contended that the contract was also lawful under the urban cooperation act of 1967, MCL 124.501 *et seq*.

The trial court denied plaintiffs' motion for summary disposition and granted defendants' motion for summary disposition under "MCR 2.116(C)(8) and/or (10)." In granting defendants' motion, the trial court ruled that defendant city's contract with defendant county did not violate § 76(3) of the sheriffs act. According to the trial court, § 76(3) did not control because § 76(3) only addresses situations in which a local government retains a police department to patrol city roads and contracts with the sheriff's department to patrol county and state roads that are within its boundaries, and in this case, defendant city contracted with defendant county to provide all law enforcement services. The trial court also based its conclusion that § 76(3) did not apply on the fact that defendant city did not merely contract for law enforcement services, but completely eliminated its police department. In addition, the trial court ruled that the contract was permissible under the home run city act and was consistent with the urban cooperation act of 1967.

II. STANDARD OF REVIEW

We review de novo a trial court's grant or denial of summary disposition based on MCR 2.116(C)(8). *Johnson-McIntosh v Detroit*, 266 Mich App 318, 322; 701 NW2d 179 (2005). A motion for summary disposition based on failure to state a claim tests the legal sufficiency of the claim based on the pleadings alone. *Id*.; *Adams Outdoor Advertising, Inc v Canton Charter Twp*,

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[3] Although plaintiffs allege that defendant city acted by resolution in deciding to eliminate its police department and contract with defendant county for the provision of law enforcement services, there is no evidence in the lower court record that defendant city acted by resolution in this regard. Although the record does contain a resolution by defendant city to authorize defendant county's sheriff deputies to enforce city ordinances, there is no evidence of a separate resolution to eliminate the city's police department and contract with defendant county for the provision of law enforcement services.

269 Mich App 365, 368-369; 711 NW2d 391 (2006). When reviewing a motion granted under MCR 2.116(C)(8), we accept all the complaint's well-pleaded allegations, as well as any reasonable inferences that can be drawn from the allegations, as true and determine whether the claim is clearly so unenforceable as a matter of law that no factual development could possibly justify recovery. *Jenks v Brown*, 219 Mich App 415, 417; 557 NW2d 114 (1996).

We also review de novo a trial court's grant or denial of summary disposition under MCR 2.116(C)(10). *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Downey v Charlevoix Co Bd of Co Rd Comm'rs*, 227 Mich App 621, 625; 576 NW2d 712 (1998). The pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties must be considered by the court when ruling on a motion brought under MCR 2.116(C)(10). MCR 2.116(G)(5); *id.* at 626. When reviewing a decision on a motion for summary disposition under MCR 2.116(C)(10), this Court "must consider the documentary evidence presented to the trial court 'in the light most favorable to the nonmoving party.'" *DeBrow v Century 21 Great Lakes, Inc (After Remand)*, 463 Mich 534, 538-539; 620 NW2d 836 (2001), citing *Harts v Farmers Ins Exchange*, 461 Mich 1, 5; 597 NW2d 47 (1999). A trial court has properly granted a motion for summary disposition under MCR 2.116(C)(10) "if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

In addition, the determination whether a statutory provision applies to a given action is a legal question which we review de novo. *Sturak v Ozomaro*, 238 Mich App 549, 567; 606 NW2d 411 (1999).

III. ANALYSIS

Plaintiffs first argue that the trial court erred in holding that § 76(3) of the sheriffs act did not apply to the facts of this case. According to plaintiffs, defendant city's elimination of its entire police department constituted a reduction in the number of sworn law enforcement officers and therefore, the contract between defendant city and defendant county for the provision of law enforcement services violated § 76(3) of the sheriffs act and was void.

MCL 51.76 provides, in relevant part:

> (2) . . . Each sheriff's department shall provide the following services within the county in which it is established and shall be the law enforcement agency primarily responsible for providing the following services on county primary roads and county local roads within that county, except for those portions of the county primary roads and county local roads within the boundaries of a city or village; and on those portions of any other highway or road within the boundaries of a county park within that county:
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> (a) Patrolling and monitoring traffic violations.
>
> (b) Enforcing the criminal laws of this state . . . .

(c) Investigating accidents involving motor vehicles.

(d) Providing emergency assistance to persons on or near a highway or road patrolled and monitored as required by this subsection.

(3) . . . Upon request, by resolution, of the legislative body of a city or village, the sheriff's department of the county in which the city or village is located shall provide the services described in subsection (2)(a), (c), and (d) on those portions of county primary roads and county local roads and state trunk line highways within the boundaries of the city or village, which are designated by the city or village in the resolution. . . . A resolution adopted by a city or village to request services under this subsection shall be void if the city or village reduces the number of sworn law enforcement officers employed by the city or village below the highest number of sworn law enforcement officers employed by the city or village at any time within the 36 months immediately preceding the adoption of the resolution. [MCL 51.76(2), (3).]

The primary goal of statutory construction is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). In determining legislative intent, a court should review the language of the statute. *Id.* If the statute is clear, the Legislature is presumed to have intended the meaning expressed, and judicial construction is neither required nor permitted. *Id.* In construing a statute, a court must consider the object of the statute and the harm it is designed to remedy and apply a reasonable construction which best accomplishes the statute's purpose. *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America v Dorsey*, 268 Mich App 313, 326; 708 NW2d 717 (2005), rev'd in part on other grounds 474 Mich 1097 (2006). In construing a statute, a court must always use common sense. *Id.*

Under § 76(3), a city is permitted to enter into a contractual arrangement with the county for additional law enforcement road patrol services. The plain language of the statute makes clear that § 76(3) does not contemplate a city contracting with a county for the county to be the sole provider of law enforcement in the city because it does not grant the sheriff the authority to enforce the criminal laws of the state but instead limits the authority of the sheriff to conduct those law enforcement services described in MCL 51.76(2)(a), (c) and (d). Furthermore, § 76(3), by its express terms, permits a city to contract with a county to provide law enforcement services only on those "portions of county primary roads and county local roads and state trunk line highways within the boundaries of the city[.]" MCL 51.76(3). Thus, the statute contemplates only instances in which a municipality maintains a police department to patrol its municipal roads and contracts with the county sheriff solely to provide law enforcement for county and state roads within the municipality's boundaries. The statute also seeks to ensure that employment of the sheriff for purposes of road patrol will not come at the expense of the members of the local police force. In this case, however, the city was not merely contracting with the county for the provision of a limited number of additional law enforcement to patrol county and state roads within the city limits. Rather, defendant city decided to completely eliminate its police department and contract for the provision of all law enforcement services with defendant county. Under the facts of this case then, § 76(3) does not apply. A contract for the provision of all law enforcement services on state, county, and municipal roadways within a

city's boundaries falls outside the scope of § 76(3). We therefore hold that the trial court properly held that § 76(3) did not apply to defendant city's contract with defendant county.

We next analyze plaintiffs' argument that the trial court improperly harmonized MCL 51.76(3) with § 3(j) of the home rule city act, MCL 117.3(j).

As we stated above, MCL 51.76(3) is not controlling on the facts of this case because defendant city was not contracting for a limited number of additional law enforcement to patrol county and state roads within the city limits, but rather was contracting for the provision of all law enforcement services. MCL 117.3(j) provides, in part: "In providing for the public peace, health, and safety, a city may expend funds or enter into contracts with a private organization, the federal or state government, a county, village, or township, or another city for services considered necessary by the legislative body." Therefore, MCL 117.3(j) grants defendant city the authority to contract with defendant county for the provision of law enforcement services, as these services are related to public peace, health, and safety. Furthermore, we observe that MCL 117.3(j) does not require a city to maintain its own police department. Therefore, the trial court did not err in concluding that defendant city was authorized to contract with defendant county for law enforcement services under MCL 117.3(j).

Plaintiffs finally argue that the trial court erred in holding that defendant city's contract with defendant county was consistent with § 5 of the urban cooperation act of 1967, MCL 124.501 *et seq*. Here, because the city decided to employ the sheriff for all law enforcement matters and completely eliminate the local police force, we are not convinced that the contract between defendant city and defendant county constituted a joint exercise of power between defendant city and defendant county under the urban cooperation act. Plaintiffs therefore failed to establish an issue of fact regarding whether the contract established a joint exercise of power between the city and the county. Furthermore, plaintiffs failed to raise before the trial court the argument that the contract between defendant city and defendant county violates MCL 124.505(g)(i) and (ii). Because that argument was not raised before or addressed by the trial court, it is not preserved for review. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

Affirmed.

/s/ Jessica R. Cooper
/s/ Janet T. Neff
/s/ Stephen L. Borrello